

## **18.300: LAND USE DECISIONS**

### **LEGISLATIVE NOTES**

The Land Use Decisions section contains ten chapters which deal with the substantive and procedural aspects of all of the various land use permits and related actions required throughout the development code. This section features the most marked changes both in content and format of any section of revised code.

With regard to the substantive requirements:

- Several chapters have only minor changes and re-formatting. These include Annexations (18.320); Conditional Uses (18.330); Site Development Reviews (18.120); and Zoning Map and Text Changes (previously Amendments to the Title and Map) (18.380).
- Planned Developments (18.350) reflects recommendations previously made by the Planning Commission but never codified into the existing code.
- A new chapter, Director's Interpretations, replaces Interpretation (18.12). The new section explains in greater detail the procedures by which the Director renders such decisions. It also includes a provision for the appeal of such a decision, goes directly to the City Council, rather than the Planning Commission or Hearings Officer, as would normally be the case. This is based on a recent Oregon court case in which it was found that appeals of Director's Interpretations to the Land Use Board of Appeals (LUBA) are more likely to be upheld in the City's favor if the appeal was handled by the City's legislative body, i.e., City Council.
- In Chapter 18.370, Variances and Adjustments, the traditional variance procedure remains intact. However, a requirement that the applicant demonstrate that a proposed variance "not be in conflict with the Comprehensive Plan," was removed from the approval criteria, since the scope of this requirement far exceeds the importance of the action. Also, the term "some economic use" was changed to "reasonable economic use" in the approval standards for variances to be consistent with the constitutional test of Dolan. The second half of this section is devoted to a new concept, adjustments. There are two kinds of adjustments:
  - "Development adjustments" which allow modest variation from required development standards within proscribed limit. For example, up to a 5% increase in maximum lot coverage or 25% reduction in front yard setback requirements can be granted in a simple procedure.
  - "Special adjustments" which are variances from development standards which have their own approval criteria as opposed to the standard criteria for a generic variance. Examples include adjustments to access and egress standards and reduction in the minimum parking ratios. Many of these adjustments are already called for in the various chapters in 18.700, Specific Development Standards, but often these do not contain a formal process for granting approval. By creating this section of 18.370, all of these adjustments are now grouped in one place, and each has an attached review procedure and approval criteria to insure that in granting them the City is meeting all state legal requirements.
- Miscellaneous Permits (Chapter 18.385) groups all of the remaining permits which in the old code appeared in their substantive chapters. These include historic overlay-related, home occupation, non-conforming use confirmation, sensitive land, temporary use and tree removal permits. Like the adjustments described above, the requirements for these could

have been retained in their original chapters. However, from an organization perspective, it was decided to consolidate information about all permits in one section.

- A consolidation of the old Chapters 18.30 (Legislative Decisions) and 18.32 (Quasi-Judicial Decisions), Chapter 18.390 (Decision-Making Procedures) contains all of the procedural requirements for each permit type. As currently organized, these chapters are unnecessarily complex, repetitive, confusing and often in conflict. The new chapter has combined all legislative and quasi-judicial decision-making procedures in a single place. These have been simplified into four procedure types:
- Type I (Ministerial Decisions) which are for minor permits or actions made by the Director or his designees based on “clear and objective” standards. Often made “over the counter,” these decisions are decided without public notice or a public hearing. The specific requirements for the Type I procedure are contained in Section 18.390.030.
- Type II (Quasi-Judicial Decisions) which apply to quasi-judicial permits and actions which contain some discretionary criteria. Type II decisions are decided by the Director with public notice and an opportunity for a hearing (appeal). If any party of standing appeals a Type II decision, such an appeal is heard by the Hearings Officer. The specific requirements for the Type II procedure are contained in Section 18.390.040.
- Type III (Quasi-Judicial Decisions) apply to quasi-judicial permits and actions that predominantly contain discretionary approval criteria. Type III actions are decided by either the Hearings Officer (IIIA) or the Planning Commission (IIIB), with appeals to or review by the City Council. The specific requirements for the Type III procedure are contained in Section 18.390.050.
- Type IV (Legislative Decisions) which apply to legislative matters. Legislative matters involve the creation, revision or large-scale implementation of public policy, as opposed to quasi-judicial decisions which affect only a specific applicant or group of applicants. Type IV actions are considered initially by the Planning Commission with final decisions made by the City Council. The specific requirements for the Type IV procedure are contained in Section 18.390.060.

A summary of permits by type of decision-making procedure is provided in 18.390.020C.

In addition, two new land use procedures are contained in Section 18.390.070. These include Expedited Land Divisions (ELD), as provided in ORS 197.360, and Limited Land Use Decisions (LLD), as provided for in ORS 197.015 (12). These are relatively obscure permitting procedures and only apply in a very limited number of circumstances. Few applicants understand or want the flexibility to use these procedures in lieu of the standard procedures described above. To insure these applicants have the option to choose such a procedure for processing a permit request and to be in compliance with state law, these procedures are described in this chapter of the code. The City's Hearings Officer has experience adjudicating permits under these procedures in the rare circumstance where an applicant opts to use them.

The last section of the chapter contains general procedures (18.390.080), which apply across all or most of the Type I - IV procedure types. These include things like pre-application conference requirements, content and acceptance of applications, director's duties and requirements governing the re-submittal of requests following denial.

In summary, Land Use Permits contains all of the information about permits in one place. Each permit or related action has its own approval criteria, which are contained in Chapters 18.320 - 18.385, and is assigned a generic procedure type, the requirements for which are contained in Chapter 18.390. A

summary of all of this information is contained in Chapter 18.310. Cross-references to this permitting information is also contained in other chapters in the code. For example, in Section 18.765.070 F2, it states:

“The Director may reduce the total required off-street vehicle parking spaces per Section 18.765.070H by up to a total of 20% by means of a parking adjustment to be reviewed through a Type II procedure, as governed by Section 18.390.040, using approval criteria contained in Section 18.370.020 C5a.”■